

Testimony of Arizona Attorney General Thomas C. Horne

U.S. House Subcommittee on Oversight, Investigations & Management House Committee on Homeland Security

**Hearing: “On the Border and in the Line of Fire: U.S. Law Enforcement, Homeland Security and
Drug Cartel Violence”**

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INTRODUCTION

I have sued the Obama administration for negligence on the border with Mexico. The Obama administration had previously sued Arizona to prevent Arizona from helping to fight illegal immigration through Arizona Senate Bill 1070. I filed a counterclaim asking for a court declaration that, among other things, the administration has failed to achieve and maintain operational control for the Arizona-Mexican border, as required by the Congress in the Secure Fence Act of 2006 and the Appropriations Act of 2008. Some may question whether it is possible to do so. I argue that it is for the following reasons:

The Arizona border is divided into the Yuma Sector and the Tucson Sector. In 2006, the Bush administration put substantial resources into the Yuma Sector, which had been one of the difficult sectors. As a result, apprehensions decreased 96 percent from 134,000 in 2005 to 7,200 last year. Substantial operational control was obtained in the Yuma Sector. But in the Tucson Sector, since 2009, well over 400,000 people have crossed illegally into the United States in this sector. That is the equivalent of an invasion, from various countries, of 20 divisions.

BACKGROUND OF THE CRIMINAL ENTERPRISES

The criminal element increased from 8 percent in 2005 to 17 percent. Criminal enterprises based in Mexico are bringing a degree of brutality to crime in the United States that we have never experienced before. They are bringing techniques they have used in Mexico, where attacks on police headquarters, assassinations of high governmental anti-organized crime law enforcement officials, murders of journalists, mass jail breaks, and ultimatums stating that a criminal enterprise will unleash terrorists acts unless the government gives its members amnesty for their crimes, all signify assertion of power unchecked by the rule of law. The Drug Enforcement Administration has confirmed Mexican drug organization presence in 230 U.S. cities and towns. They are expanding from drug smuggling to all kinds of criminal activity.

The United States and Mexico’s mutual economic future faces catastrophe because Mexican drug cartels, fueled by the American appetite for drugs, are becoming entrenched as criminal enterprises that affect Mexican commerce from petroleum to groceries, and whose method of intimidation is ruthless violence. Mexico is the United States’ second largest trading partner and

the two countries must work together to be sure their commerce is not destroyed by the criminal enterprises.

In October, the Phoenix area experienced its first beheading, where someone walked into a Chandler apartment and found a head in one part of the room and the body in another. Two months ago, in Casa Grande, midway between Phoenix and Tucson, 15 cartel members had a fire fight with bandits in an attempt to steal their drugs. Just a few weeks ago, one of my Special Agents in the Attorney General's Office was shot by a suspected cartel operative in the Phoenix area. In the United States, it is widely understood that marijuana, cocaine, and methamphetamine come largely from or through Mexico. It is also common knowledge that Mexican drug organizations are engaging in atrocities, murders, and wide-spread corruption.

In Pinal County, as an example, the number of pounds of marijuana seized has more than doubled in the last two years from 20,000 pounds to 45,000 pounds.

The extent to which these criminal enterprises have expanded beyond smuggling to other kinds of crimes is not as widely known.

While familial drug smuggling organizations have thrived near the border for generations, their present successor Mexican criminal enterprises now present a new and different threat to North American well-being. Although they are sometimes called drug cartels, they are not primarily cooperative price-setting entities and they are not just about drugs—they are primarily opportunistic, generally—and sometimes fiercely—competitive multi-crime criminal enterprises. This discussion uses the term “criminal enterprises” (“CEs”) because this term is used in federal and state racketeering statutes.

There are many sources of the CEs' increased power. A few of them include:

- 1) Immigration into the U.S. brought Mexican criminals to U.S. cities in large numbers in the 1990s. DEA has confirmed Mexican drug organization presence in 230 U.S. cities and towns. Larger Mexican criminal populations allow Mexican drug organizations to rely on extended affinity to vertically integrate their distribution networks. Simultaneous law enforcement pressure on rival groups, such as the Colombians and their air smuggling methods, further permitted Mexican CEs to vertically integrate the drug distribution chain.
- 2) The Mexican CEs have incorporated influences from the “Zetas,” former members of an elite military unit originally recruited by a drug organization as mercenaries in inter-enterprise warfare. The Zetas brought with them greater eagerness to diversify into criminal opportunities other than drug smuggling. The Zetas also brought a culture of ruthlessness and intimidation, with huge economic power implications.
- 3) Expendable mercenaries are more available to the CEs. Maquiladoras, and other opportunities such as preparing to illegally cross the border into the U.S., brought many

unemployed young men to northern Mexico. The sharp decline of the economies of the U.S. and Mexico in 2008 swelled this available pool of mercenaries. With many young strangers available as gunmen, CE leaders are not as constrained about violent confrontations with rival gangs or with government authorities as they had been. When the casualties will be replaceable strangers, aggression and brutality become more acceptable.

4) The availability of high-powered weapons has armed the gunmen as never before. While the exact amounts and percentages of U.S.-sourced weapons that are being used by the CEs are the subject of some debate, it is beyond dispute that the CE gunmen have no shortage of weaponry and that U.S. sources account for some portion of these arms. Any weapons in this context are too many.

5) In the United States, it is widely understood that marijuana, cocaine, and methamphetamine come largely from or through Mexico. It is also common knowledge that Mexican drug organizations are engaging in atrocities, murders, and wide-spread corruption. Nevertheless, it does not appear to be widely understood that continued consumption of Mexico-sourced drugs is the direct root cause of the erosion of the free democracy in Mexico and ultimately of the economy of North America. Our young people are acutely aware of the indirect consequences of their consumer decisions. Yet they continue to buy Mexico-sourced drugs as if there were no consequences for these decisions. This can only be explained by a lack of knowledge of the linkage between these particular consumer choices and the long term effects of those choices.

In Mexico, popular support for the representative government's desperate efforts to control the growing power of the CEs appears to be flagging as the death toll and violence mounts. The misunderstanding that these are simply drug or human smuggling organizations persists despite the general knowledge that the CEs are also engaged in many non-drug, non-human smuggling criminal activities. As in the U.S., it appears that the populace in Mexico is not aware that the uncontrolled rise in the power of the CEs foreshadows the potential failure of the Mexican economy.

THE DANGER TO COMMERCE PRESENTED BY CRIMINAL ENTERPRISE DIVERSIFICATION

The CEs are increasingly engaging in diversified organized criminal activity, such as diverting petroleum products, agricultural crop theft, hijacking truck and train cargo, extorting major businesses, import/export fraud, intellectual property theft, and targeted intelligence-driven kidnappings of business and societal leaders. They are uniquely situated for attacks on trade because most of them grew out of smuggling organizations, so they can exploit their deep roots on the key trade routes between the U.S. and Mexico. Apart from the direct injury to the immediate victims, these diversified criminal activities are strategically significant in two ways. Most obviously, they are sources of income and therefore sources of power to the CEs. Most

important, these crimes allow the CEs to infiltrate, burden, and ultimately destroy trade-related activity and investment.

The diversified CEs are fundamentally different from their predecessor smuggling-based organizations. The former passive bribery-for-amnesty stance of the smuggling organizations is now largely a thing of the past. The CEs are shifting to an aggressive stance, actively asserting primacy over the elected representative government in their respective geographic areas. Attacks on police headquarters, assassinations of high governmental anti-organized crime law enforcement officials, murders of journalists, mass jail breaks, and ultimatums stating that a CE will unleash terrorist acts unless the government gives its members amnesty for their crimes, all signify assertion of power unchecked by the rule of law.

Taking advantage of non-smuggling criminal opportunities requires immunity of a fundamentally different kind than that accorded to smuggling organizations in the past. Past impunity was for smuggling, which is regarded as mostly victimless from the Mexican point of view. Present crimes are far from victimless. So immunity cannot be bought, and therefore must be coerced. Diversification necessarily requires and encourages intimidation. Because the crimes are not victimless, law enforcement and the populace at large must be discouraged from taking action by means other than mere bribery. In this context, open and notorious cruelty and inhuman atrocities serve an economic purpose. They terrorize the general public with two complementary messages: 1) the CE will show horrible cruelty to any who stand against them (such as by having the wife who thought she was bringing ransom money to rescue her husband forced to watch as his head is cut off); and 2) the representative government is powerless to do anything effective about it. This is one explanation for the apparent escalation in the level of atrocity. Murders escalated to beheadings and mutilation. Beheadings became commonplace, so killers are now skinning the victim and ripping the heart from the chest, leaving the corpse so grotesque that responders can barely stand to look at the remains. The diversification of the criminal activity and the decline of representative government authority are complementary—one escalates as the other declines. As organized criminal activity succeeds—success defined as being accomplished at a profit without countervailing consequences for the perpetrators—it is repeated and expanded. The diversification means that all economic activity in the particular area is increasingly at risk of victimization.

The societal impact of the CEs' campaign of terror is well encapsulated in the presence of .50 caliber machine guns mounted in CE SUVs patrolling the streets of Mexican border cities. This weapon, in the hands of a CE, is a brazen assassination about to happen.

The mere existence of such CE war wagons speaks volumes. Most significant for strategic purposes, such weapons signify the vulnerability of legitimate business because no business can stand against extortion and victimization when the perpetrators are this cruel, have this kind of firepower, and have the impunity to display it. The war wagon is a rolling advertisement that business must capitulate—or else—and that investment in Mexico includes the associated risks.

SEARCHING FOR ALTERNATIVES TO ECONOMIC CRISIS

Internal Limiters within CEs

If the Mexican CEs could be relied upon to recognize the economic consequences of their depredations and desist before it is too late, then the potential strangulation of commerce would not be an inevitable consequence of the growth and evolution of diversified CEs.

Organized crime leaders operate in a treacherous high-risk environment in their daily lives. They stay in charge by inspiring, fostering, and demanding the loyalty of an immediate inner circle. Keeping a loyal inner circle involves several strategies, the most important of which is making financial opportunities available to the most loyal. If the dominant figure turns away apparent economic opportunities for his CE, and therefore for his inner circle, he invites that inner circle to look to another contender for leadership. There is always another contender waiting in the wings for a shot at the top spots. When traditional U.S. Mafia dons balked at trafficking in narcotics, they were replaced by leaders who would condone it because the profits were high. Whenever criminal opportunities are identified and prove successful, leaders must exploit them or risk being replaced (which often involves their death).

This analysis applies to the potential for strangulation of U.S./Mexico commerce. The CEs continue to exploit and expand their ability to engage in criminal opportunities because there is no internal limiter. The CEs may not intend to strangle commerce. Indeed, they may have no thought that this could happen and no desire for this result. But a pack of wolves may decimate a deer population without a thought about what that may mean to future wolves years hence. They act like wolves because that is their nature. CEs act like CEs because that is their nature. They will continue to escalate their parasitic criminal conduct without regard to whether their crimes will ultimately kill the host. They will continue unless and until they are stopped. So the diversification of the Mexican CEs' criminal conduct will continue as long as the economic opportunities are there and will take whatever advantage of those opportunities that they can get away with.

Governmental Retreat

If the capitulation of the Mexican government would end the bloodshed, perhaps the threat to commerce would abate. Some observers of the present violence have written that President Calderon's decision to call in the military was the initial cause of the present violence. This is worth mentioning only because if that was the cause, then reversal of the decision could be seen as a possible way to end the violence. However, the rise of the newly aggressive and power-acquiring CEs was not caused by Calderon's administration, and in any event, to the extent that increased law enforcement has some violent repercussions, the Mexican government cannot reverse that course of action.

The Zetas arrived on the scene in the late 1990s, bringing their military tactics and new ruthlessness and opportunism. For example, drug violence in Nuevo Laredo increased dramatically in 2004 and over 100 people died in Nuevo Laredo alone in January-August 2005. This was long before Calderon's inauguration.

The frequent references to the number of murders in Mexico since the start of the Calderon administration in late 2006 create the unfounded and unfair impression that the violence began with his administration. This is not true. They also create the incorrect impression that his policies are a cause of the violence. Since the violence began before his administration, this is patently false.

The CE's tactics are rooted in the CE's diversification and their need to avoid prosecution for crimes beyond drug and human smuggling. The violent tactics have the effect of undermining representative government by instilling lack of confidence and fear in the Mexican people. These outrages to civil life include murders of reporters, murders of mayors and a gubernatorial candidate, postings of murder threats and actual videos of murders (including beheadings) on the Internet, ads for criminal gang recruitment in the newspapers, murders of and death threats to clergy, "taxation" (extortion) of city residents, car bombings, and horrific mutilations. While torture has always been a part of criminals' intelligence gathering, torture for the purpose of getting information is different than wanton mutilation of the already-dead bodies and the public desecration of their remains, such as by hanging mutilated bodies in public, skinning corpses, or delivering severed heads with messages. These are not responses to law enforcement. If they were responses to law enforcement, they would be done in the U.S. by the representatives of these same CE's in U.S. cities in response to even more effective law enforcement. They are not done in the U.S. for the simple reasons that the CE's are not presently contending for control of cities or areas of the U.S., as they are in Mexico, and they do not believe they could avoid prosecution for such crimes in the U.S., as they do in Mexico. Erroneous attribution of the violence to the law enforcement efforts to control the CE's and the resulting erroneous understanding of the reasons for the CE's tactics leads to the erroneous idea that law enforcement accommodation would end the escalation of CE's criminal power.

In any event, in the present circumstances, it is not really possible for the Mexican government to back down. Mexican smugglers have operated with relative amnesty, but that was in the context of the crimes of drug and human smuggling. The crimes have changed. They now include diversion of petroleum (owned by the government and therefore by the people), hijacking cargo, kidnapping business people, extorting insurance companies, extorting whole cities, and atrocious murders, including of clergy, journalists, and political leaders. No government can look the other way in connection with such conduct, no matter what bribe is offered, so there is no "back down" solution.

Nor would the CE's accept a return to the former order, even if could be offered. The scenario suggested by some is that with a new president and new administration, the CE's could return to

the prior order, agree to limit criminal activities to drug and human smuggling, perhaps consolidate to a more manageable smaller set of CEs with agreed territories, and pay bribes for peace with the government. This scenario rests on three unsupported foundations.

First, as explained above, once the CE has enjoyed the criminal benefits of operating with impunity in a governmentally challenged area by exploiting new criminal opportunities, and parceled out those additional income streams to the inner circle, its nature does not permit unforced retreat. A leader who proposed to his inner circle that the group henceforth limit itself to drug and human smuggling and abandon the other criminal opportunities would not remain the leader for long. The evolution of the drug smuggling organizations into diversified organized criminal enterprises was an evolution, not a simple temporary switch of one set of tactics for another.

Second, there is no reason that the present CEs would accept the limited role suggested by this scenario. Mexican law enforcement and military efforts have so far proven inadequate to slow the diversified criminal conduct. They have had some success at lopping off top participants and at making some activities more difficult, particularly drug activities, and a great many gunmen have been eliminated by the authorities or by each other, but there is no evidence that the CEs' combined net income has declined. Because there is no existing credible threat of appropriate consequences, the hypothetical government suggestion of peace terms would offer nothing to the CEs that the CEs don't already have.

Third, this scenario supposes tight control throughout the ranks of the CEs, such that an order from top CE leadership to forego income from non-drug, non-human smuggling activities would be effective. The CEs have recruited many young guns, and many of those recruits are now forever changed by having adopted the macho high-risk, high-spending values of their peers. They are unlikely to accept any such order. Faced with their own gunmen's desire to continue to engage in profitable crimes, a cartel leader who had given such an order would have no incentive to spend the lives and resources necessary to enforce the order, even if the leader had the power to do so.

Legalization of Drugs

Some argue that the legalization of drugs may be a panacea by which the violence could be stopped and the strength of Mexico's representative government restored, deflecting the threat to the economy. This is simply not possible. The fulcrum is economics, not politics. Please consider the economics of, say, a hypothetical "National Cocaine Corp." ("NCC"), a new business formed to sell hypothetically recently legalized cocaine in the U.S. As the first order of business, NCC must undertake the expense of getting an FDA permit after showing the purity of the product and the conditions of its manufacture in a clean plant under closely monitored conditions, under the watchful eyes of various doctors, chemists, and quality control experts. Next, NCC must pay for insurance against the inevitable lawsuits à la the massive suits against

Big Tobacco. Next, NCC must set its prices based on its payment of enormous taxes, like alcohol and tobacco, but undoubtedly much higher. But the Mexican CEs won't have any of these expenses. In addition, legalization will no doubt deem some young people; say those under 21, too young to use the drugs legally, again like alcohol and tobacco. This market would not be available to NCC, but the CEs would keep selling to this market. Bottom line: there is no legal product that can match the price of smuggled drugs. So the Mexican CEs would stay in business and would continue smuggling the same products, but for a larger market because the products are approved by the government as "legal

Sealing the Border

Taking this suggestion at even its most perfect vision, sealing the border cannot resolve the threat to commerce. Assuming for the sake of this discussion that the U.S. could somehow erect a perfect, miraculous wall through which no illegal drugs, aliens, guns, or money could flow, this would not stop the CEs in Mexico from operating. They would continue to develop diversified criminal activities, in addition to selling more drugs in Mexico. They would complete the escalation of their dominance over the representative government, strangling U.S./Mexico trade from the south side of the perfect wall. They would still cause economic collapse. The collapsed Mexican representative government would then have little control of the growth of the CEs. The CEs would turn their attention to penetrating the U.S. with diversified criminal activities, using the collapsed northern Mexican areas as staging grounds. After economic ruin, Mexico would become a staging area for CE diversified criminal attacks on the U.S.

Abandonment of Mexico

It is also tempting to some to suggest that the U.S. hide behind Mexico's sovereignty to continue our role. But this is not an option. Certainly sovereignty is an issue that the U.S. must deal with in true partnership against our common enemy, but abandonment of our neighbor and trading partner is not a proper way to recognize and honor its sovereignty. Nor would it be effective to avert economic catastrophe.

The Hard Reality

In addition to the massive invasion of illegal aliens, and the extremely serious problem of criminal enterprises invading through the Tucson Sector and the rest of the border and spreading throughout the United States, there is the problem of terrorism from the Middle East. A terrorist seeking to enter the United States to do mass destruction could get to Mexico and blend in among the 400,000 people crossing illegally every year through the Tucson Sector.

The Obama administration could do in the Tucson Sector what the Bush administration did in the Yuma Sector, but it has chosen not to do so.

In the beginning of World War II, the French discovered that a chain is no stronger than its weakest link, when German troops poured through an unguarded section of the Maginot Line, and the whole Maginot Line proved to be useless. All of the work the United States has done to control illegal immigration in California, Texas and New Mexico, and in the Yuma Sector, are useless, if it simply increases the number of illegal aliens pouring through the Tucson Sector.

The best plan that I know of to achieve control over the Tucson Sector is the 18 point plan prepared by the Arizona Cattle Growers Association. It includes additional technology and infrastructure, an additional 3,000 Border Patrol Field Agents in Arizona, and forward operating bases immediately adjacent to the U.S. border with Mexico, approximately one every 12 miles. Some of the Arizona Cattle Growers Association provisions are included in the McCain Kyl Bill currently before Congress.

Most immediately, the National Guard should be increased, not removed, as currently planned by the administration. There are 500 there now, and there were 6,000 there in 2006 when the Bush Administration obtained control over the Yuma Sector. Removing the Guard from its role on the border is the exact wrong thing to do. It will leave a gaping hole in law enforcement efforts, put more innocent lives at risk, and it sends a message –whether intentionally or not – that the administration is not serious about border security.

The sober truth is that the U.S. faces a substantial and immediate risk that the Mexican criminal enterprises will drive the U.S.’s neighbor and second largest trading partner into economic ruin in the next few years. There is no easy “back down” solution, no “legalize drugs” solution, and no “seal the border” solution. Mexican CEs pose a serious threat to U.S./Mexico commerce, which in turn poses a serious threat to the economic health of Mexico and therefore of North America.

It is going to be a very difficult and costly road. It will require careful assessment of the options, none of which are easy or attractive, in an atmosphere unclouded by simplistic rhetoric relating to such things as hoping that organized criminals will give up lucrative criminal lines of business to get impunity from prosecution that they already have, hoping that they will show selfless patriotism, legalizing drugs, or sealing the border. It is time to put these impossible, ineffective, or irrelevant agendas aside and consider what must be done for the survival of North America’s economic health. There is no easy way around it.

CONCLUSION

Mr. Chairman and Members, there are people in the U.S. and Mexico living in fear. They are victims of our nation’s appetite for drugs; victims of the Mexican cartels’ thirst for power fueled by innocent blood; and they are victims of negligence by the federal government at the border. This must end. I am doing my best in the courts, but sometimes courts decline to enter into what they view as political issues that need to be dealt with by Congress. I ask you to please deal with this issue that is so crucial to our country.

APPENDIX:

COUNTERMEASURES EXHIBIT: THE FUNDAMENTAL CHANGE IN THE ESSENTIAL GOAL REQUIRES FUNDAMENTAL STRATEGY SHIFTS

The escalating power of the CEs in Mexico and the resulting threat to North America's economic stability are the core concern. This is because without adequate defense of commerce all sub-agendas fail—judicial and government corruption reforms, social and labor programs, suppressing violence, drug and weapon interdiction, illegal immigration—all require viable representative government.

Containment No Longer Central

Recognizing that the keystone of all other agendas is defense of legitimate commerce requires fundamental reconsideration of how we evaluate potential strategies. U.S. strategy relating to smuggling organizations has long been evaluated by measuring its effectiveness in terms of interdiction of drugs arriving in the U.S. Policy considerations have been fundamentally a balance of the amount of resources required to get an acceptable interdiction result. Adjustments relating to domestic activities have been made in the relative share of resources devoted to interdiction, preventive education, and treatment, but the worst case scenario has been marginally more drug use. That has changed. That containment model no longer applies because containment cannot avoid the emerging threat. The present core threat—the potential for economic collapse—can occur if drug interdiction remains constant or even if drug interdiction improves. The diversification of the CEs' criminal activities means that there could be a collapse that is not solely caused by drug smuggling. The most essential goal is no longer preventing prohibited imports—it is finding ways to preserve legitimate commerce. We simply cannot prevail by playing goalie—keeping the other side from getting smuggled drugs or humans past our border defense—so no matter how good we may get at playing goalie, it will not be good enough.

U.S. No Longer the Key Theater

In the past, the U.S. efforts to control drug and human smuggling have been staged almost entirely in the U.S. with some relatively minor activities in Mexico. The present threat to commerce will be won or lost in Mexico. As discussed above, even sealing the border, if it were possible, would not save the North American economy from the CEs and it would not prevent the CEs from becoming entrenched in a collapsed Mexican state immediately south of our border.

U.S. Success No Longer Possible without Mexican Success

As a corollary of the above, the U.S. is no longer solely in control of the outcome. It must depend on Mexican action because if the Mexican government loses the battle for control of the trade routes, the U.S. and Mexican economies will be devastated without regard to U.S. efforts that take place exclusively in the U.S. Quite simply, the U.S. cannot prevail in this struggle unless the Mexicans prevail. Geography is not optional— so we must succeed with the neighbor we have.

Much Strategic Thinking No Longer Appropriate

Strategists in this field generally have drug-fighting backgrounds. They have observed and understand the devastating effect drug use has on the quality of life. They tend to focus on the flow of illegal drugs. Of course the flow of illegal drugs is a major concern, and the anti-drug efforts must continue. However, relegating the deeper and more significant threat to the general North American economy to the margins of strategic analysis leads to an allocation of resources that marginalizes the commercial threat. The threat to commerce is the key because economic collapse forecloses all other government efforts, including drug interdiction.

Other strategists have international intelligence backgrounds. They tend to focus on the intramural ebb and flow of the fortunes of the various CEs. This focus has some positive effects, such as illuminating the fact that the CEs are not a monolith—an important circumstance that is generally absent in media accounts. CEs are quite different and behave differently in important ways. As examples, the Zetas are not derived from smuggling family roots, La Familia Michoacana fronts a social and pseudo-political agenda, asserting in effect a divine mission to murder and torture its drug dealing rivals, the Gulf Cartel has substantially older leadership than others, and fragmentation of CEs presents significant law enforcement opportunities in addition to increasing CE casualties through inter-CE violence. While all of these differences are important because they indicate different tactical approaches against the respective enterprises, all of the CEs are arrayed against the rule of law and all of them together present the threat of economic strangulation, so focusing on the ebb and flow of their internal power struggles and shifting alliances as though they were competing soccer franchises distracts from addressing their collective threat to the economy. It also has the effect of placing too much emphasis on the importance of individual leaders, the removal of which is indeed important but is not the key to ultimate success.

Consideration of just the raw total numbers in connection with the murder rate may also misdirect resources. The level of organized crime-related murders in Mexico is staggering—now set by State Department sources at some 36,000 since the end of 2006, and rising sharply year after year, with over 15,000 in 2010 alone. However, identification of the reduction of this entire figure as a primary goal would not serve the preservation of U.S./Mexico commerce. Much less than half of these casualties involve police, military, and other non-drug-related members of society, such as kidnapping victims, journalists, clergy, and bystanders. It is this minority of murders that is directly related to economic concerns because it is these murders that

undermine popular trust in government institutions and investment in Mexico. Investigation and prosecution of these crimes directly supports stability, investment in resources, and commerce. In contrast, the remainder of the death toll represents the fall-out from turf battles and internal strife among CEs. This part of the death rate rises when inter- and intra-CE competition rises, which often happens after the arrest or removal of a dominant CE figure, whether by government action or by internal action. So this portion of the death figure actually serves as a rough barometer of the government's success in stirring the CEs up by taking successful action against them and breaking them into warring fragments. Therefore, the fact that this part of the total figure was very high in 2010 and is climbing in 2011 is bad news primarily for the deceased, but not bad news for the survival of the economy.

Drug Consumption Decisions No Longer Just Personal

Americans generally see drug involvement as an individual choice between avoiding illegal drug use and suffering jail, treatment, or marginal/stunted lives. Americans often view the actors as choosing their own course but not so much choosing consequences to others outside their immediate family and social circle—like choosing a career or a level of commitment to a healthy life style. The stakes are now vastly different for those not directly involved in these decisions. Americans who choose involvement with Mexico-sourced drugs are choosing economic devastation for the rest of North America and political disenfranchisement for Mexican citizens. Mexicans who choose allegiance to the CEs in Mexico are making a similar choice. So success depends on elevating social consciousness to a degree that has not been necessary at any previous time on the drug issue. The level of collective social commitment to avoid Mexico-sourced drugs must be very high to overcome the reluctance of drug users to give up some of their sources or choices. No national cause has required this level of joint commitment of Americans on any issue since World War II.

COUNTERMEASURES

We—the U.S. and Mexico acting together—must act decisively now. It will require a close partnership with, and often following the leadership of, the Mexican government. The alternative is the catastrophic consequences of a destabilized Mexico.

Strategic Considerations Today

Strategically, we first acknowledge that the most pressing threat is strangulation of U.S./Mexico trade. This differs from the conventional wisdom of some strategists described above. Importation of illegal drugs and illegal aliens are of course enormous and multi-faceted concerns. In addition to the harm these activities do to the U.S., they also fuel the CEs. But the significance of these harms is overshadowed by the fact that if the Mexican economy fails, all efforts to control these CE activities will also fail because Mexican government resistance will disintegrate. The CEs will then have ready access to multiple alternative sources of income from the diversified criminal activities within Mexico and will have protected bases in northern

Mexico from which to extend criminal operations into the U.S. Our two countries have labored under high levels of drug and alien smuggling for many years. Therefore, we can continue to do so at least until the CEs are broken. But we cannot afford a failed Mexico. Defending U.S./Mexico commerce and investment is therefore our most pressing focus.

Strategic allocation of resources and priorities generally involves identifying the essential components of a criminal group or industry, focusing on those components that are most essential to the criminal activity and most vulnerable to governmental action, and attempting to bring specific remedies to bear on those pressure points on the criminal organism. As an example, movement of money from undocumented immigrants' sponsors to coyote organizations through an immediate payment mechanism such as Western Union is an essential element of the coyote business model in the Southwest. The coyote money arriving in Phoenix was a root cause of substantial violence—home invasions, kidnappings (i.e., theft of human cargo by rival coyotes), and inter-coyote assaults and murders. The wire transfers are subject to law enforcement interference. So focusing on those transactions was a very effective strategy to combat coyote violence in Arizona in the 2001-2009 time frame.

Applying this strategic process to Mexican CEs points to focusing on their interaction with legitimate businesses, such as interaction to accomplish money laundering and interaction with business suppliers of necessary services and materiel, such as money movement, communication equipment, weapons, or vehicles. This presents challenges when applied to the Mexican CEs' diversified criminal activities. The expanded list of Mexican criminal enterprises' criminal activities includes petroleum theft, agricultural crop theft, product counterfeiting, cargo hijacking, business kidnapping, business extortion, and import/export fraud. These all require substantial business-directed infiltration, subversion, and corruption in the target industries. But U.S. law enforcement is generally ill-prepared and woefully understaffed to counter such attacks. Moreover, these activities are much more centered in Mexico than drug and human smuggling. U.S. law enforcement is particularly ill-prepared to conduct business-directed financial investigations in connection with businesses operating in Mexico.

Ultimately, success or failure will pivot on two key fulcrums: the U.S. public's recognition that use of Mexico-sourced drugs is killing North America economically and the Mexican people's continuing support of their government's efforts to maintain the rule of law. If either of these fails, Mexico will likely descend into economic ruin and political instability, and large parts of the U.S. economy, particularly in the Southwest, will sink with it.

IMMEDIATE TERM COUNTERMEASURES

In the immediate term, focusing on preserving U.S./Mexico commerce points to several parallel goals:

1. Focusing U.S. and Mexican investigation and prosecution on the CEs' incursions into commercial activities, with the investigations centered in Mexico and the prosecutions in the U.S.;
2. Cutting off CEs from sources of income, services, and materiel that the U.S. has direct influence over, specifically money laundering, including the payments for illegal drugs and aliens, and the weapons flowing south from the U.S.; and
3. Recasting and vastly expanding efforts to prevent and treat U.S. use of Mexico-sourced drugs.

Investigations and Prosecutions

The first of these focal points will require significant new approaches and resources:

Business Outreach

- a. U.S. government outreach to all U.S./Mexico international businesses. Enlist as allies those that are in some way facilitating the CEs, wittingly or unwittingly. As examples, money transmitters and stored value program operators are used by CEs to transfer value from the U.S. to Mexico without the risk and expense of smuggling bulk cash. Hundreds of millions of illicit dollars pass through these systems annually. Review anti-money laundering programs and industry contribution of data relating to these transactions and gather industry insights into how the illicit money flows and how industry members could prevent or report it. ICE began similar efforts with its Trade Transparency Unit in 2009.

Industry Teams and Strategies

- b. Recruit and train federal and state investigators and prosecutors in the U.S. and Mexico to address specific criminal industries, to include petroleum theft, cargo hijacking, import-export fraud, kidnapping/extortion, and intellectual property theft (i.e., product counterfeiting) aimed at international businesses. Enlist victim businesses to educate law enforcement and to partner with law enforcement in focused attacks on these diversified criminal activities. Expand existing federal and state racketeering efforts to support bringing trade-based civil and criminal racketeering cases in U.S. courts.

The strategic analysis applied by these teams, as elsewhere, would start by identifying the components that permit the CEs to continue and prosper and thereby threaten U.S./Mexico trade. It would proceed to identify those components that are most essential to the CEs' endangerment of the U.S./Mexico economy, and then those components among them that are most vulnerable to government attack.

An effective strategy calls for objectively quantifiable, meaningful goals and objectives. The amounts of drugs seized and the number of arrests of CE participants have served this purpose

badly. They measure the wrong metrics, and do so ambiguously. We need to focus on Mexican business measures, particularly businesses involving the border area, and on the effective net profit of the CEs. Certainly this second figure is particularly difficult to estimate and will require some incisive research, but this is a war of attrition, and we need to aim at the center of the target, so we need do the work necessary to estimate this figure and keep it ever in front of us as our ultimate measure of success. A goalie measures success by the number of saves. A warrior measures success by the eradication of the enemy.

Coordinated and Data-Sharing Organization

c. Collect these investigators and prosecutors in multi-agency collocated task forces modeled on the High Intensity Drug Trafficking Area (HIDTA) or Border Enforcement Security Taskforce (BEST) task forces. HIDTAs and BESTs presently dot the Southwest Border in strategic locations on the U.S. side. One BEST team already exists in Mexico City. These investigative operations would involve Mexican and U.S. investigators and focus on some specific areas of organized criminal conduct that directly attack commerce. The leaders on this list include petroleum thefts, truck and train cargo hijackings, extortion, kidnapping, and import-export fraud, but the list also includes financial industry segment. These particularly include the money transmitter and prepaid industries, which have both indicated willingness to work constructively with law enforcement.

This kind of operation is not new to law enforcement. As an organizational model, the HIDTA example of multi-agency cooperation effectively crosses jurisdictional boundaries and cuts across different levels of government, and it can also be applied to multi-national cooperation and industry partners operating in an appropriate capacity.

These groups would solicit industry participants' knowledge of their industry's vulnerabilities to penetration and victimization and acquire detailed understanding of the particular circumstances of CE attacks on that industry. Law enforcement would in turn pass on knowledge about the criminal organizations' activities and trends to industry to enable industry to assess threats and harden defenses. These groups would jointly encourage industries' coordination within and among themselves to alter practices to make victimization more difficult. They could also serve as bridges between industry and law enforcement and non-governmental organizations engaged in social programs, such as programs addressing the roots of gang recruitment, for example *Todos Somos Juarez*, created a year ago in the wake of the massacre of 15 non-gang-affiliated young people in Juarez by drug gunmen.

These task forces would be located in both the U.S. and Mexico, particularly in commercial centers such as Monterrey, Hermosillo, Tijuana, Juarez, and Saltillo. They would be administered to accommodate Mexican leadership of these operations in Mexico and still allow them to bring the resulting criminal prosecutions and civil RICO cases in U.S. courts using U.S. statutes. Like the U.S. HIDTAs, they would depend heavily on non-federal officers and

prosecutors. Because the conviction rate in Mexico is under 5%, the U.S. and Mexico must rely on continued extradition support from Mexico, which is now extraditing record numbers of defendants, until the Mexican statutes and judicial system are prepared to assume full partnership in the prosecutions.

One major impediment to the development of such coordinated trade preservation expertise is the lack of data connectivity among the law enforcement agencies most available to develop such cases. In particular, while each HIDTA is now independent, has its own way of doing business, and its own unique mix of law enforcement initiatives, they lack effective data connectivity in the Southwest, and of course in Mexico. Although the information stored at one HIDTA could be necessary to further an investigation in another region, existing intelligence sharing mechanisms are not set up to provide smooth access to the data in near real time. Enhanced data connectivity would move the HDTAs into position to serve as the foundation for the proposed new groups.

d. Expand U.S. judicial and related support resources in the economic centers with most direct trade and business headquarter connections with Mexico, such as San Diego, Los Angeles, Phoenix, San Antonio, Dallas, Houston, New Orleans, Miami, and New York. Substantial new prosecutions require substantial new resources.

The second of the focal points is money laundering, including bulk cash flow into Mexico. The strategic analysis described above identifies money laundering as an essential CE activity, one that directly leverages the CEs' infiltration of commerce and threat to trade, and one that is vulnerable to government action. Anti-money laundering enforcement has the triple advantages of attacking the economic incentive to engage in crime, making conducting a CE harder by interfering with the flow of money that CEs need to maintain their operations, and pointing investigations and prosecutions to dominant or corrupt participants and to specific CE operations by following the money trail back to them. Investments of CE proceeds in the U.S. are vulnerable to forfeiture and prosecution. The existing substantial efforts to locate and seize illicit money in transit should be expanded and better unified through intelligence sharing and resource coordination. Technologies such as tracking devices and license plate readers should be fully integrated into this intelligence coordination. Additional research into alternative means of value movement should cover black market peso exchange money laundering, other trade-based money laundering, and stored value devices.

Regarding the flow of weapons, cross-border multi-jurisdictional task forces similar to those described above must focus on the reduction of the flow of weapons into Mexico. These prosecutions would include racketeering actions against U.S. gun sellers who are aware that their sales are facilitating Mexican CEs. Racketeering prosecutions could also be used to vindicate civil liability for providing substantial assistance to CEs in connection with the shooting deaths of Mexican police officers with weapons traced to those selected complicit U.S. sellers.

These efforts should be supported by national legislation controlling movement of weapons into Mexico, such as requiring reporting of multiple sales of high-risk long guns (e.g., AK-47 style assault rifles) and large ammunition sales, and banning certain assault rifles and high caliber weapons (e.g. .50 cal. weapons).

The money and gun interdiction efforts will take place largely in the U.S. Law enforcement resources for these efforts are now made possible in part by the presence of the National Guard, which contributes directly to these efforts and also makes resources available that would otherwise be required to do things that the Guard does. Keeping the National Guard on the border is therefore an important objective.

The third of the focal points, preventing and treating use of Mexico-sourced drugs, will require, above all else, broad recognition of the consequences of funding the Mexican CEs by using Mexican-sourced drugs. A massive public education effort would get the truth to potential consumers, who, once aware of the consequences, will do the right thing. U.S. consumers have dramatically changed attitudes toward drunken driving and smoking once made aware of the consequences. They will also do so with regard to the threat to the economic survival of Mexico, the extreme violence, and the erosion of the quality of life in Mexico that are the consequences of Mexico-sourced drug use in the U.S. U.S. consumers have not done so because they do not know the facts. The Merida Initiative contained an explicit commitment to invest more resources in demand reduction. The administration has not adequately funded such efforts, although it has acknowledged the role of U.S. consumers in the CEs' rise. We can't continue to make empty promises. Nor can we fail to inform the public of the threat when informing the public is the best way to reduce that threat.

THE TIME FACTOR

The above immediate term goals would have been timely if begun four years ago when President Calderon began his initiative. Experience with new or rapidly expanding government operations counsels that these operations will take significant time to get into effective motion, but time is now very short. This time factor calls for some action that could buy breathing space to allow these initiatives to gain momentum.

This is a war of attrition in which the enemy is receiving vast amounts of income. At the same time, the enemy is not frugal, and is not saving its income. On the contrary, the gunmen who are responsible for the violence are living life day to day, spending freely in the shadow of a consciously or subconsciously held (and well-founded) belief that they will probably die an early death. A sudden and substantial loss of criminal income would create a cash flow crisis and massive disruption of operations, disloyalty, and internal strife, particularly among the young guns for whom the allure of sudden wealth makes their high-risk, high-adrenalin life glorious in their eyes.

The U.S. and Mexico, working together, probably have the capacity to create a short-term (6 to 18 months) cash flow crisis by moving decisively to cut off southbound cash and guns and, incidentally, northbound smuggled goods—drugs and humans. This would be a fully bi-national program, as with all of these proposals, involving Mexican support in the form of extraditions and access to defectors, in addition to mirroring U.S. efforts on the south side of the border. The particulars of such an operation are beyond the scope of this discussion. The obstacles are daunting. Moving investigators or officers to the border or to off-border theaters with direct effect on the border is complex and can be prohibitively costly in short terms. Identifying precise efforts that could be ramped up in a short time and that will have surgical effects on CE income is obviously difficult. Nevertheless, a concerted and coordinated effort to create a cash-flow crisis has not been done before. If successful, it would buy time to effectuate other longer term countermeasures. It is worth the effort for the appropriate U.S. and Mexican representatives to attempt to work out the particulars of such an effort and assess its potential.

LONG TERM GOALS

Focusing on preserving U.S. /Mexico commerce points to other long term goals, including:

1. Expand support of Mexico's ongoing reforms of its judicial system to make it more transparent, more resistant to corruption, and therefore more credible in its results;
2. Support of freedom of the Mexican press by assisting with investigations of intimidation and assassination of journalists and other media representatives;
3. Form joint anti-corruption initiatives partnering with U.S./Mexico international businesses to address corruption that affects U.S./Mexico trade;
4. Support of ongoing Mexican reforms of the federal and state police by offering training and technical support of Mexican law enforcement agencies and the Mexican military;
5. Promote more effective Mexican statutes adapting concepts from U.S. forfeiture, racketeering, and terrorism statutes to the Mexican legal framework;
6. Reduce the availability of young gunmen in northern Mexico by restructuring manufacturing opportunities, perhaps by encouraging plants to move from population centers, improving working conditions, and matching job supply and local demand for jobs more effectively to minimize excess labor supply.
7. The joint investigation and prosecution efforts described as immediate term objectives and the training, statutory, and labor-related objectives described above imply a final set of objectives aimed at cross-border communication and cooperation. In addition to training, the U.S. and Mexico must fund and revitalize joint legislative and executive groups such as trade groups, border governors, border attorneys general, judicial conferences, and other similar non-

governmental groups that serve to break down barriers to joint law enforcement and judicial cooperation.

CONCLUSION

Although the situation is dire, it is not hopeless. Mexico has indicated its will to survive by enacting sweeping judicial and anti-money laundering reforms. It is in the process of effecting fundamental anti-corruption measures. It is using military and newly created law enforcement capabilities and it is working with U.S. law enforcement more closely than at any time in memory. By acting now and working together we can still defeat this common enemy.